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CHARLES ELMORE

In the Supreme Court of the United States

No. 75, October Term, 1951.

No. 762, October Term, 1950.

LOUISE MCGREW MOFFETT as an Individual and Executrix of the Estate of Thomas S. Moffett, Deceased, *Petitioner,*

vs.

COMMERCE TRUST COMPANY, a Corporation, HELEN WEEDE, ORLIN A. WEEDE, B. C. HOWARD, WILLIAM H. KOPP and R. E. COPMAN, *Respondents.*

BRIEF OF RESPONDENTS HELEN WEEDE AND ORLIN A. WEEDE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

ORLIN A. WEEDE,
WALTER A. RAYMOND,
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ORLIN A. WEEDE, *Pro Se.*

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In the Supreme Court of the United States

No. 75, October Term, 1951.
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LOUISE MCGREW MOFFETT as an Individual and Executrix of the Estate of Thomas S. Moffett, Deceased,
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vs.

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BRIEF OF RESPONDENTS HELEN WEEDE AND ORLIN A. WEEDE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

NOTE RE RECORDS AND SUPPLEMENTAL RECORDS: References to Supplemental Record of respondents Helen Weede and Orlin A. Weede (white cover) will be by placing letter "W" ahead of page numbers, as (W15). References to Supplemental Record of respondent Commerce Trust Company (blue cover) will be by placing letter "C" ahead of page numbers, as (C15). References to petitioner's Record (brown cover) will be by plain numbers, as (15), except as to the "Proceedings in U. S. Court of Appeals, Eighth Circuit" (brown cover) will be referred to by "Pro.," as (Pro. 15).

OPINIONS BELOW.

The opinions of the District Court (769-784) are reported at 75 F. Supp. 303 and 87 F. Supp. 438. The opinion of the Circuit Court of Appeals for the Eighth Circuit (Pro. 1-13) is reported at 187 F. 2d 242.

Jurisdiction: The courts below had authority to pass on and dismiss petitioner's Second Amended Complaint on the ground that it failed to state a cause of action or claim upon which relief could be granted. *Bell* v. *Hood,* 337 U. S. 678.

STATEMENT.

Petitioner is not asking for equitable relief herein (W1012). This is a damage suit at law wherein petitioner attempts to allege conspiracy, by generalities and conclusions, on the part of respondents and others (2, 3), seeking $2,500,000.00 damages ($1,000,000.00 actual and $1,500,000.00 punitive) (33) "under the Constitution and Laws of the United States, and particularly Sections 41, 42, 43, 47 and 48, Title 8 U. S. C. A." (2, 3).

Petitioner Louise McGrew Moffett did not appeal from the dismissal of her Amended Complaint herein, 75 Fed. Supp. 303 (1, 2, 769), but did appeal (786) from the dismissal of her Second Amended Complaint herein, 87 Fed. Supp. 438 (82, 775); opinion inaccurately quoted by appellant (W1003-5). The United States Court of Appeals, Eighth Circuit, affirmed—187 F. 2d 242 (Pro. 1-13).

This is the fifth time petitioner has carried Moffett litigation to the United States Supreme Court, as will hereinafter appear.

This is the second time petitioner and her same counsel have prosecuted litigation through the United States courts charging conspiracy as to same parties and alleged situations as here. See *Louise McGrew Moffett* v. *Robbins, etc.*, 14 F. Supp. 602, 81 F. 2d 431; certiorari denied, 298 U. S. 675. All these courts decided against her.

The former conspiracy-damage suit carried to the United States Supreme Court through the Missouri state courts by petitioner Louise McGrew Moffett was the same as her suit herein, petitioner asserts (29).

In petitioner's Jurisdictional Statement to the United States Supreme Court in her said state suit filed July 19, 1946, No. 318, petitioner made the same assertions and contentions, with others, as now, of which Your Honor-

able Court takes judicial notice, and which are set out at pages 862 to 905, inclusive, of Supplemental Record of respondents Helen Weede and Orlin A. Weede herein (this Supplemental Record has white covers).

The Foreword and Statement of Facts as filed by respondent Helen Weede in said suit is set forth herein in respondent Helen Weede's Exhibit 47 (W943). The Court is now referred to same as it will help clear up for the Court numerous situations which were again adjudicated in that suit (193 S. W. 2d 588, 592, 354 Mo. 1098 (year 1946); appeal dismissed, 329 U. S. 669; rehearing denied, 329 U. S. 827).

Petitioner attempts herein to have the United States courts hold as void the Missouri Statute of 1911 providing for probate judges in each county of Missouri (3, 4) and also to hold as void Sections 85, 86 and 87, R. S. Missouri, 1919 (4, 5, 8), and hold as void and "fictitious" numerous final judgments and decisions of courts of competent jurisdiction in Missouri, Kansas and Oklahoma, and petitioner is attempting herein to again relitigate same, which final judgments and decrees are set forth in Motion to Dismiss of respondent Orlin A. Weede (83-94) and also in Motion to Dismiss of respondent Helen Weede herein (94-99) with references to pertinent paragraphs where same appear on face of petitioner's Second Amended Complaint.

The final judgments, decrees, and orders of courts of competent jurisdiction, to which petitioner Louise McGrew Moffett and Thomas S. Moffett, her husband, or either of them, were parties since the death of John Moffett, August 23, 1927, and of which petitioner now complains, and which petitioner is attempting to again relitigate herein, are also set forth in respondent Helen Weede's Exhibit 50 herein (W990), none of which have been modified, changed, or set aside, as follows:

Moffett v. *Moffett* (Comanche County, Kans.), 131 K. 546; 292 P. 942; Cer. den. 283 U. S. 826. Amicable partition proceedings in conformity with last cited Supreme Court opinion-Orlin A. Weede Exhibits 4 (W279), 5 (296) and 6 (W302); Helen Weede Exhibits 4 and 5 (W501), referred to in Paragraphs 27, 28, 30, 31, 32 and 33 (12-18) of petitioner's Second Amended Complaint. Petitioner Louise McGrew Moffett's Deed Confirming Partition of April 21, 1931, to respondent Helen Weede, then Helen Moffett, is set out at Orlin A. Weede's Exhibit No. 6 (W302).

Moffett v. *Moffett* (Harper County, Kans.), 131 K. 582, 292 P. 947; cited in *Clark, etc., and Louise McGrew Moffett* v. *Helen Moffett et al.*, 136 K. 711, 18 P. 2d 555, which petitioner cites in her Exhibit "E," Second Amended Complaint (25).

Clark, etc., and Louise McGrew Moffett v. *Helen Moffett et al.* (defendants), *Commerce Trust Company, etc., and R. O. Robbins, etc.* (intervenors) (Harper County, Kans.), 136 K. 711, 18 P. 2d 555; Cer. den. 290 U. S. 602; 290 U. S. 642; cited in petitioner's said Exhibit "E"; also the judgment, findings and conclusions of the trial court (District Court of Harper County, Kansas, suit 7374) set out in Exhibit 1 of Orlin A. Weede (W89-153).

Ethel Mott Zombro v. *Thomas S. Moffett, Louise McGrew Moffett et al.*, 44 S. W. 2d 149 (Jackson County, Mo.), referred to in Paragraph 26 of petitioner's Second Amended Complaint (15). Demurrer of Helen Moffett (now Helen Weede) in said Zombro case to petition to construe John Moffett will, sustained on ground that respondent Helen Weede had elected to take under the law and not under said will and was therefore not a proper or necessary party to said suit. See Orlin A. Weede's

Exhibits 15 (W335), 16 (W337), 17 (340), 18 (W341), 19 (W343) and 20 (W345.) No appeal taken by any party, including Thomas S. Moffett and Louise McGrew Moffett, as to the order sustaining said demurrer of Helen Moffett (now Helen Weede). Petitioner has called attention to this Zombro case on face of Second Amended Complaint in Paragraph 26 where excerpt is quoted concerning "construing the will of John Moffett."

Louise McGrew Moffett v. *Commerce Trust Company et al.*, 193 S. W. 2d 588 (Mo., 1946), *appeal* dismissed 329 U. S. 669; Reh. den. 329 U. S. 827; referred to at Paragraph 53 of Second Amended Complaint (30).

Louise McGrew Moffett v. *Helen Moffett et al.*, No. 12178, Circuit Court of Clay County, Missouri (partition), as set out in Orlin A. Weede's Exhibits 21-a (W346), 21-b (W350), 21-c (W352), regarding Helen Weede's election and her one-half share of the John Moffett estate.

Order of Distribution and Partition in suit No. 7374 in the District Court of Harper County, Kansas (Sept. 11, 1936) (see Helen Weede's Exhibit No. 31 (W785));

Order of Confirmation of Distribution and Partition of Kansas Lands to Helen Moffett, widow of John Moffett, Deceased, and Relative Commissioners' Report (dated May 13, 1937), in the District Court of Harper County, Kansas, 7374, Helen Weede Exhibit No. 33 (W790);

Order of Confirmation of Distribution and Partition of Oklahoma Lands to Helen Moffett, widow of John Moffett, Deceased (dated July 15, 1937), in the District Court of Harper County, Kansas, suit No. 7374, Helen Weede Exhibit No. 34 (W810);

Order for Final Settlement, in the Matter of the Estate of John Moffett, deceased, No. 1015, in Probate Court of Chautauqua County, Kansas, Helen Weede Exhibit No. 39 (W851) (1940);

Order Approving Final Account and Decree of Final Settlement and Settlement and Distribution (July 29, 1940) in the Matter of the Estate of John Moffett, deceased, No. 7833 in the County Court of Oklahoma County, Oklahoma, Helen Weede Exhibit No. 40 (W859);

Order Approving Commissioners' Report (partition Oklahoma lands) (Nov. 9, 1938), in District Court of Harper County, Kansas, suit No. 7374, Helen Weede Exhibit No. 23 (W640);

Following orders, in District Court of Harper County, Kansas, dated December 8, 1938, in suit No. 7374, see Helen Weede Exhibit No. 23 (W638-644):

Order Overruling Objections to Further Proceeding;

Order Re Final Report (R. O. Robbins, Admr.);

Appeals by said Louise McGrew Moffett and Grace Torrance Clark from the last mentioned orders, Nos. 34224 and 34309 in Kansas Supreme Court were dismissed by the Kansas Supreme Court (W639).

Petitioner Louise McGrew Moffett in her two capacities *as here*, in her suit in the United States Courts, *Louise McGrew Moffett, etc.*, v. *R. O. Robbins, etc.*, 14 Fed. Supp. 602, 81 Fed. 2d 431 (10 Cir.; January, 1936) (W250), certiorari denied 298 U. S. 675, alleged conspiracy between the same parties as to same alleged situations as here, as shown by appellant's Transcript of Record (10 Cir.), respondent Orlin A. Weede Exhibit No. 1 herein (W36, 64, 69, 80), and petitioner therein attacked the final decrees of the District Court of Harper County, Kansas, suit 7374, and attacked the above Kansas Supreme Court decisions which sustained said Harper decrees (18 Pac. 2d 555, 136 K. 711, 290 U. S. 602, 290 U. S. 642; 292 Pac. 947, 131 K. 582). Petitioner is herein attempting to relitigate all those matters and to nullify the above United States Court decisions (2-72). Petitioner has made her Exhibit "E" a part of her Second Amended Complaint (25),

therefore the citations therein hereinbefore set out appear on the face of the Second Amended Complaint (39, 40), in addition to the allegations in said Second Amended Complaint proper (2-33).

Also appears on the face of petitioner's said Second Amended Complaint, suit No. 3348, *Helen Moffett* v. *T. S. Moffett et al.,* in the District Court of Comanche County, Kansas (12-18) and on appeal, *Moffett* v. *Moffett,* 292 Pac. 942, 131 K. 546, Cer. den. 283 U. S. 826 (84, 87) and *Zombro* v. *Moffett,* 44 S. W. 2d 149 (Mo.), cited with approval by the Kansas Supreme Court in aforementioned suit, *Clark, etc., and Louise McGrew Moffett* v. *Moffett et al.,* 18 Pac. 2d 555, 136 K. 711 (95). In Paragraphs 52 and 53, said Second Amended Complaint (29, 30, 31), petitioner sets out allegations concerning her damage suit in the Missouri courts and that same was against same parties as here, asking the same damages, relief, asserting same alleged conspiracy by generalities and conclusions as here (29), and sets out a few of the allegations in her Fifth Amended Petition therein (514-520), which said petition was dismissed after three demurrers sustained in Circuit Court (521), two on general demurrers and third on misjoinder parties plaintiff and on appeal the Missouri Supreme Court ruled that petitioner Louise McGrew Moffett has not only had her days in court but her months and years (193 S. W. 2d 588, 592; 354 Mo. 1098 (1946)); appeal dismissed, 329 U. S. 669; rehearing denied, 329 U. S. 827 (30, 85, 98). THIS LITIGATION WAS SUBSEQUENT (1946) TO THE HOWARD FEE CASE WHICH WAS DECIDED MARCH 6, 1940, cited repeatedly in petitioner's complaint, and petition herein.

In addition to all of the aforegoing final decrees and judgments which petitioner is attempting to collaterally attack herein and which she calls "void" in her petition herein, brief and Second Amended Complaint, petitioner

is also attacking pending litigation, so-called "fictitious" suits and claims, in various courts, referred to by partial captions, in her Second Amended Complaint (9-14) and wants Your Honorable Court to prejudge and assume that same are fictitious (9-14).

When petitioner Louise McGrew Moffett filed her Second Amended Complaint herein February 7, 1948 (2) she had on file in the Circuit Court of Jackson County, Missouri, her second amended petition in her suit No. 341,312, *Louise McGrew Moffett et al.* v. *Helen Moffett* (now respondent Helen Weede), *Commerce Trust Company et al.*, filed by her June 27, 1933 (C94-104), asking the Court to consolidate said so-called fictitious claims and suits therein, and to enjoin further proceedings elsewhere (C94-104). Without notice, petitioner caused dismissal of her said suit 341,312 July 13, 1948 (W861).

Petitioner, in her said second amended petition in said suit 341,312, stated (C98, 99):

> "That judgments in said cause in Harper County, Kansas, were entered, from which an appeal was taken to the Supreme Court of the State of Kansas, which latter court caused an entry to be made on its records affirming said judgments, to review which judgments of affirmance an application has been made in the Supreme Court of the United States for a writ of certiorari directed to the Supreme Court of Kansas, for which reason the matters involved in the suit in Harper County, Kansas, are not now before this Court in this cause for determination."

The Harper County, Kansas, judgments just referred to by petitioner in above quotation are the same as referred to in her petition and brief herein.

Thomas S. Moffett, husband of petitioner, started suit 7374 in the District Court of Harper County, Kansas, August 15, 1929 (W993) (making respondent Helen

Weede a party defendant) (W453) to partition the Moffett Brothers land and asked that the interests of all parties be determined. Notwithstanding this, he tried to partition Moffett Brothers lands before there was an accounting. Commerce Trust Company as administrator of Moffett Brothers partnership estate and also as executor of the estate of John Moffett, deceased, through its attorney, respondent B. C. Howard, asked leave to intervene in said Harper equity accounting suit and the Kansas Supreme Court held that an accounting was proper in said suit, and sustained the trial court in granting leave to Commerce Trust Company to intervene in its two capacities, before trial on the merits, and in its opinion (1930), *Moffett* v. *Moffett,* 292 Pac. 947, 131 K. 582, 588, said:

> "Appellant contends that the Commerce Trust Company is intervening in two capacities which are in conflict. But we think there is no such conflict as would make it difficult for the trial court to ascertain and adjudicate the respective rights of the parties."

Said court also held:

> "Appellant contends that the action is not brought in the proper forum for an accounting. But the plaintiff chose this forum and is in no position to complain on that ground. Appellant contends that a proper accounting, such as asked for by appellees, would require the consideration of property situated in other states—Missouri and Oklahoma. But it is a principle of law, applicable to courts of equity, that such a court, having assumed jurisdiction of the subject matter, will reach out and draw into its consideration and its determination the entire subject matter, and bring before it all the parties interested therein, in order that a complete and effectual final decree, adjusting the rights of all parties, may be

> entered and enforced. (*Hazen* v. *Webb,* 65 Kan. 38, 68 Pac. 1096; *Apple* v. *Smith,* 105 Kan. 732, 185 Pac. 903; the same case on rehearing, 106 Kan. 717, 190 Pac. 8)."

The Eighth Circuit case, *Coleman* v. *Apple,* 298 Fed. 718, certiorari denied, 266 U. S. 619, and *Smith* v. *Apple,* 6 Fed. 2d 559, are related cases and in point.

After the Kansas Supreme Court determined that an accounting was proper and also proper for the Commerce Trust Company to intervene as aforesaid, Thomas S. Moffett died December 22, 1930 (W95) and said suit was revived in the names of petitioner Louise McGrew Moffett and Grace Torrance Clark, executrix of the estate of Thomas S. Moffett in Kansas as plaintiffs (W96, 121, 122). They asked the Harper County District Court for leave to plead (W525). Before the trial of said Harper suit 7374, all interested parties, including petitioner Louise McGrew Moffett, entered into the following stipulation for an accounting (W215-216, W211, W518, 519):

> "We the undersigned, being all of the parties, plaintiff, defendant and intervenors in the above entitled cause, hereby stipulate and agree that said cause may be set down for a hearing on Wednesday, October 14th, 1931, before the court at 10:30 o'clock a. m. on said day and further stipulate that in the event an accounting should be ordered by the court herein the said parties hereto hereby agree that further proceedings in said cause shall go forward without delay, or at such time as the court may order."

The court, on October 14, 1931, ordered said accounting (W181, 176), and the accounting went forward in said Harper suit as shown by the findings, conclusions and decrees (W89-151; W181-205).

The 46 Specifications of Error (W984-990) filed by petitioner and her present counsel in 1932 in the Kansas Supreme Court on appeal from the final decrees rendered in said Harper suit 7374 (trial on merits) set forth the contentions of petitioner in that suit on appeal. No objection was made by petitioner in said Specifications of Error that the Commerce Trust Company was an intervenor in its two capacities, in said Harper equity accounting suit. The Kansas Supreme Court on trial on the merits in said Harper suit sustained the trial Court: *Clark, Louise McGrew Moffett* (petitioner) v. *Helen Moffett* (now respondent Helen Weede) *Commerce Trust Company* (respondent) *et al.*, 18 P. 2d 555, 136 K. 711; certiorari denied, 290 U. S. 640, 290 U. S. 642.

The subject matter of a number of petitioner's alleged "fictitious" suits and claims was included in the accounting in the Harper equity-accounting-partition suit No. 7374 and there were adjudicated many accounting claims between John Moffett and Moffett Brothers, between Thomas S. Moffett and Moffett Brothers, and between the Oklahoma partnership of Moffett Brothers Cattle, Land & Lumber Co. and Moffett Brothers, as shown by the decrees (W180-205) and Findings of Fact and Conclusions of Law (W89-151). Moffett Brothers was dissolved by the death of John Moffett August 23, 1927 (W89).

Said Harper final decrees (W180-205; W89-151) were affirmed by the Kansas Supreme Court, *Clark, etc., Louise McGrew Moffett* v. *Helen Moffett, et al.*, 18 Pac. 2d 555, 136 K. 711 (January, 1933), certiorari denied, 290 U. S. 602, 290 U. S. 642. In the accounting in said Harper suit No. 7374, the subject matter of the following petitioner's alleged and so-called "fictitious suits and claims" (9, 13) was adjudicated (W180-205) and there-

fore the following suits and claims have been dismissed, to-wit:

> Suit No. 320,648, Circuit Court, Jackson County, Missouri, *Moffett Brothers* v. *Oklahoma partnership of Moffett Brothers Cattle, Land & Lumber Co.*, $212,138.41 (9), dismissed as shown by Orlin A. Weede Exhibit 22 (W356); and suit for identical amount, $212,138.41, between same parties, filed in Circuit Court, Oklahoma County, Oklahoma (11), dismissed as shown by Orlin A. Weede Exhibit 27 (W393);
>
> Claim of estate of *John Moffett* v. *Moffett Brothers*, $140,714.79 (10), filed in the Probate Court of Jackson County, Missouri, dismissed as shown by Orlin A. Weede Exhibit 23 (W357); and claim for identical amount, $140,714.79, between same parties, filed in Probate Court of Chautauqua County, Kansas (11);
>
> Claim of *Moffett Brothers* v. *Thomas S. Moffett Estate*, $29,558.47, filed in Probate Court of Jackson County, Missouri (10), dismissed as shown by Orlin A. Weede Exhibit 24 (W359).

The final decree in said Harper equity-accounting-partition suit No. 7374 in favor of the John Moffett estate against Moffett Brothers partnership estate, as a result of said accounting (one of three major decrees) (W187, W192, W196), has been fully satisfied (C741, C743). Also the judgment in favor of Moffett Brothers against the Oklahoma partnership of Moffett Brothers Cattle, Land and Lumber Company for $101,000.00 has been satisfied (C726-734) (W859).

Petitioner Louise McGrew Moffett lists among her alleged "fictitious suits" suit No. 3348, *Helen Moffett* (now respondent Helen Weede) v. *Thomas S. Moffett, et al.*, filed in the District Court of Comanche County, Kansas, for 1127½ acres of land (12), which suit was thoroughly

adjudicated, and both Thomas S. Moffett and petitioner Louise McGrew Moffett were parties to said suit as shown by respondent Orlin A. Weede Exhibits 4 (W279), 5 (W296), 6 (W302), 7 (W304), 8 (W316) and respondent Helen Weede Exhibit 13 (W542). A copy of the Journal Entry of Judgment February 12, 1929, is set out herein as Orlin A. Weede Exhibit 4 (W279) (also, see W501). Said judgment was affirmed by the Kansas Supreme Court, *Moffett* v. *Moffett,* 292 Pac. 942, 131 K. 546 (year 1930), cer. den., 283 U. S. 826. Following said affirmance an amicable partition of the land involved was entered into by all interested parties and entered as a judgment of the court, styled "Journel Entry of Partition and Incidents Thereto," April 16, 1931, being set out herein as Orlin A. Weede's Exhibit 5 (W296) (also, see W501), in which equitable partition petitioner Louis McGrew Moffett received 240 acres (W297), and received partition deeds therefor and has continuously retained said lands to date, Helen Weede Exhibit 50 (W990). Petitioner Louise McGrew Moffett duly executed and delivered her deed confirming partition to Helen Moffett (now respondent Helen Weede), for the lands partitioned to said Helen Moffett in said Comanche suit, copy of which deed is set forth herein as Orlin A. Weede's Exhibit No. 6 (W302). Pages 20 to 23 of petitioner Louise McGrew Moffett's brief, in support of her petition for writ of certiorari in the United States Supreme Court, including specifications of errors, IN SAID COMANCHE SUIT is set out herein (W316-319). Copies of pleadings filed in said Comanche suit No. 3348, are set forth herein as Helen Weede Exhibit 13 (W542, W547, W552, W553).

Respondent Helen Weede, formerly Helen Moffett, widow of John Moffett, deceased, received but one-half of the estate of John Moffett, deceased, as appears from

the following: Harper suit 7374 (W121), Comanche suit 3348, Conclusions of Law 1 and 4 and Judgment, Orlin A. Weede Exhibit No. 4 (W292, 293); and in petitioner's suit No. 12178, Circuit Court of Clay County, Missouri, 1936, Order of Partition, Orlin A. Weede Exhibit No. 21-c (W353, 350). Respondent Helen Weede elected to take under the law and not under the will of John Moffett, deceased, in the States of Missouri, Kansas and Oklahoma following the death of John Moffett, August 23, 1927, and said elections were introduced in evidence in the above Harper suit No. 7374 (W93). See respondent Helen Weede Exhibits 9 (W526), 10 (W532). Said elections in Missouri and Kansas were introduced in evidence in said suit 3348, District Court of Comanche County, Kansas, Helen Weede Exhibits 11 (W533) and 12 (W534-542), and as shown by aforementioned Missouri Zombro case; Orlin A. Weede's Exhibits 15 (W335), 16 (W337, 17 (W340), 18 (W341), 19 (W343) and Helen Weede Exhibits 7 (W510) and 9 (W530, W531). The Kansas Supreme Court, with approval, cited the Missouri Zombro decision and said Comanche suit No. 3348 decision with reference to the elections of Helen Weede, formerly Helen Moffett, widow of John Moffett, deceased, in said Harper suit, *Clark, etc., Louise McGrew Moffett* (petitioner) v. *Helen Moffett, et al.*, 18 Pac. 2d 555, 136 K. 711 (C27, 28), as follows (l. c. 713) (also, see W345, 346):

> "His widow elected to take under the law (C27) * * * The will of John Moffett had been construed as it affected some of the beneficiaries, both by this court (*Moffett* v. *Moffett*, 131 K. 546, 292 P. 942) and by the Supreme Court of Missouri (*Zombro* v. *Moffett* (Mo.), 44 S. W. 2d 149). There was no longer controversy among the parties as to the share or interest which each of them should receive in the land to be partitioned, except as the same might be modified by the accounting." (l. c. 713.) (C28.)

Prior to the trial of said Harper suit petitioner Louise McGrew Moffett, in said Harper suit took the deposition of respondent Helen Weede, then Helen Moffett, in the office of appellant's counsel, M. J. O'Donnell, August 6, 1931 (W490), and Helen Weede testified therein that there never was an antenuptial agreement and that the unsigned so-called antenuptial papers were destroyed at the request of John Moffett, as set forth in respondent Helen Weede's Exhibit No. 1 (W490). After said deposition was taken August 6, 1931, appellant Louise McGrew Moffett, with said counsel, was in court many days (W180) and testified during the trial of said Harper equity suit No. 7374 in which suit petitioner was plaintiff (W215, 216), and had full opportunity to ask respondent Helen Weede, then Helen Moffett, when she testified, any further questions upon any subject (W180, W182). At end of Kansas Supreme Court opinion, *Clark, etc., Louise McGrew Moffett* v. *Helen Moffett,* 18 Pac. 2d 555, 136 K. 711, that court said:

> "• • • the court gave the parties ample time for trial and a fair opportunity in the introduction of evidence. The judgment is fully sustained by the evidence, • • •" (C39).

Petitioner took the deposition of respondent Helen Weede at Shawnee, Kansas, in suit 339,134, Circuit Court of Jackson County, Missouri, August 8, 1941, and as stated in respondent Helen Weede's Exhibit No. 7 (W512), the sum total of any questions asked regarding the nonexistent prenuptial agreement was one question to which an objection was made and sustained and thereafter no one asked further questions concerning same. Again petitioner took the deposition of Helen Weede in petitioner's Missouri damage suit No. 479,103 November 24, 1941

(Helen Weede Exhibit 2 herein) and again petitioner's counsel interrogated respondent Helen Weede, who again testified that there was no antenuptial agreement and that the unsigned copies of a so-called antenuptial agreement had been destroyed at the request of John Moffett (W494, W499, W500). Respondent Helen Weede's Exhibits Nos. 1 and 2 aforementioned were made a part of her Consolidated Defenses herein, but petitioner omitted these two exhibits from her printed record (98, 99).

All the assertions of petitioner Louise McGrew Moffett by conclusions and generalities concerning said nonexistent antenuptial agreement (7, 15, 146, 147) are alleged by her to have occurred prior to the trial of said Harper suit 7374 which was tried October 14, 1931, to January 13, 1932 (W180, W187), and suit 3348 in the District Court of Comanche County, Kansas, tried in 1929 (W280), and in petitioner's Clay County, Missouri, partition suit No. 12,178, March Term, 1936 (W352). In her affidavit, petitioner Louise McGrew Moffett states that she never saw any so-called antenuptial agreement (146, 147).

That respondent Helen Weede, formerly Helen Moffett, widow of John Moffett, deceased, was and is the owner of a one-half interest in said estate of John Moffett, deceased, was adjudicated many years ago in the many final judgments, decrees and orders by courts of competent jurisdiction, listed at the beginning of this Statement. Said adjudications are *res judicata* and cannot be collaterally attacked (83-94; 94-99; W2-7).

Petitioner Louise McGrew Moffett in the Howard fee case attempted to collaterally attack many final decrees, none of which were minimized, modified or changed. The Missouri Supreme Court in the Howard fee case passed upon only *one point,* to-wit: What, if any, additional Moffett Brothers fee should be paid to respondent B. C.

Howard. The Missouri Supreme Court so stated twice in said Howard fee case (42, 43). The Howard fee case, involving Mr. Howard's fee only, was an appeal from the Probate Court of Jackson County, Missouri, and probate procedure governed. Later, in petitioner's damage suit alleging conspiracy against the same parties as here (29), after said Howard fee case, the Missouri Supreme Court again stated that but *one point* was passed upon in said Howard fee case, that is, what additional Moffett Brothers fees Mr. Howard was entitled to (*Moffett* v. *Commerce Trust Co., et al.,* 193 S. W. 2d 588, l. c. 592; 354 Mo. 1098) (C79).

The Missouri Supreme Court in its last mentioned opinion (193 S. W. 2d 588, 591) subsequent to said Howard fee case opinion, in her conspiracy damage suit same as here, Paragraph 52 (29), ruled:

> "Judge Ridge sustained the demurrers on the sole ground of misjoinder of parties, but the demurrers also attacked the petition for misjoinder of alleged causes of action and for failure to state a cause of action. We think the reason assigned by the trial court is sufficient, *but his ruling can be sustained on the other grounds mentioned. Hartvedt* v. *Harpst,* Mo. Sup., 173 S. W. 2d 65, loc. cit. 68; *Bushman* v. *Barlow,* 321 Mo. 1052, 15 S. W. 2d 329, 330."

At l. c. 592 in same case, the Missouri Supreme Court held as follows:

> "Appellants (petitioner Louise McGrew Moffett) make many other assignments of error; assailing the constitutionality of Missouri statutes relating to partnership estates, and the probate laws of both Missouri and Kansas; ask us to declare void certain decisions of the Supreme Court of Kansas; invoke the treaty between this country and France in 1803 and the 'due process' and other provisions of the State

> and Federal Constitutions. Most, if not all, these questions have been decided adversely to appellants by courts of competent jurisdiction in suits brought by appellants or in which they actively participated as defendants. *Moffett* v. *Moffett,* 131 Kan. 582, 292 P. 947, 77 A. L. R. 294; *Clark* v. *Andrews,* 136 Kan. 23, 13 P. 2d 294; *Clark* v. *Moffett,* 136 Kan. 711, 18 P. 2d 555; *Id.* 290 U. S. 602, 54 S. Ct. 227, 78 L. Ed. 528; *Moffett* v. *Robbins,* D. C., 14 F. Supp. 602; *Moffett* v. *Robbins,* 10 Cir., 81 F. 2d 431, *Id.,* 298 U. S. 675, 56 S. Ct. 940, 80 L. Ed. 1397. Appellants have not been denied due process. They have not only had their day in court, but their months and years."

The last mentioned decision of the Missouri Supreme Court is the same case as referred to by petitioner at paragraphs 52 and 53, Second Amended Complaint (29, 30, 31). The United States Supreme Court dismissed petitioner's appeal, 329 U. S. 629. Rehearing denied, 329 U. S. 827.

All of the matters alleged in petitioner's Second Amended Complaint including paragraphs 14, 20 and 21 (8, 9, 14, 15) relating to the Moffett Brothers books were thoroughly considered by the District Court of Harper County, Kansas, suit No. 7374, where the court made findings of fact and conclusions of law (W97-101) and rendered the decrees referred to in *Clark, etc., and Louise McGrew Moffett* v. *Moffett, et al.,* 18 P. 2d 555, 136 K. 711.

Petitioner Louise McGrew Moffett and Grace Torrance Clark in said Harper suit made no objections to the first paragraph of Finding of Fact No. 23 (W97), to-wit:

> "Prior to 1924 Moffett Brothers had not made separate partnership tax returns for the various Moffett partnerships to the Internal Revenue Department as seems to have been necessary and accordingly the accounting firm of Kopp and Copman, composed of William H. Kopp and R. E. Copman (respondents),

were employed by John Moffett and Thomas S. Moffett to set up new books for said Moffett Brothers partnership as of January 1st, 1924, carrying forward the various Moffett Brothers partnership accounts from the old joint books, called 'Moffett Brothers and Andrews Books,' and the said accounting firm entered upon such undertaking, and in so doing the said accountants received their instructions from the said John Moffett and the said Thomas S. Moffett, as partners, and also relating thereto they consulted with Helen Moffett, wife of John Moffett, and Louise McGrew Moffett, wife of Thomas S. Moffett."

It is elemental that findings of fact not objected to stand unimpeached. There are many such findings in the Harper suit, as is revealed by comparison of petitioner's "Motion to Modify, Change and Make Additional Findings of Fact" (W153-169) with the Findings of Fact as made by the Harper court (W89-153).

The District Court of Harper County, Kansas, made Finding of Fact No. 24 as to the Moffett Brothers partnership books (W99-100):

"The partnership books as set up on January 1st, 1924, continuously remained in the possession of John Moffett and Thomas S. Moffett, partners, until the date of the death of the said John Moffett, and that after the death of said John Moffett, Thomas S. Moffett had possession of all the books, papers and documents belonging to the partnership of Moffett Brothers until the date of his death at which time the possession of said books and documents passed to the possession of Louise McGrew Moffett who has since continuously kept possession of all the books, papers and documents belonging to the partnership of Moffett Brothers and the said Louise McGrew Moffett is now in the possession of the same, and produced them at the trial of this case.

These books, while they may not have been artfully and scientifically kept, were in the main substantially

correct and up to the time of the death of John Moffett they were regarded by all of the parties whose accounts were kept therein as reasonably reliable and dependable.

After the accountants set up the new books their report was fully considered by both parties, John Moffett and Thomas S. Moffett, and it does not appear that either one of them ever made any objections or complaints in regard to the books or in regard to the entries made therein, possibly with the exception of the item concerning the Guss transaction hereinafter mentioned.

When the accountants delivered their report which is marked 'Defendant's Exhibit 18' to Moffett Brothers, in their office in Kansas City, Missouri, the plaintiff Louise McGrew Moffett and the defendant Helen Moffett, were both present."

See petitioner Louise McGrew Moffett's requested Finding No. 24 (W158, 159).

See Finding of Fact 25 (W100) and petitioner's requested Finding 25 (W159).

The trial court in said Harper suit found (Finding 27, W101):

"The court finds that John Moffett in his lifetime and Thomas S. Moffett at all times prior to the death of John Moffett considered the accounts shown by the books as being correct, and the court further finds that the accounts in said books were substantially correct and that the status of such accounts is fairly reflected in the report prepared by the accountants, R. E. Copman and W. H. Kopp, under date of October 12, 1931, together with the exhibits attached thereto and introduced in evidence, and marked 'Intervenor Commerce Trust Company's Exhibit No. 8'. * * *"

During the trial (June, 1929) of said suit 3348 District Court of Comanche County, Kansas, petitioner Louise

McGrew Moffett testified (W320, 321) concerning her work on the Moffett Brothers' books prior to the death of John Moffett August 23, 1927, that she worked in the Moffett office for the first time in first part of 1923; that at first she was not working on the books of the current time but correcting errors and trying to separate accounts, making segregated accounts of the books in order to set up a new system of bookkeeping; that she is still in the Moffett office; that she took up work on the current books in the latter part of 1924 when Miss Jackman left; that she worked on the books of the office until the time of John Moffett's death (August 23, 1927); that the books she worked on were Moffett Brothers; Moffett Brothers & Andrews; Moffett Brothers & Andrews Commission Company, a corporation; Andrews, Moffett and Lewis; Moffett Brothers Cattle, Land & Lumber Company (Oklahoma partnership); that Mrs. John Moffett (now respondent Helen Weede) was in the office at the same time "working at the same things I was working at" and continued to work there until a couple of days before John Moffett's death (W320, 321).

Respondents William H. Kopp and R. E. Copman had been employed in 1924 (W98) by John and Thomas S. Moffett to set up new books for said Moffett Brothers partnership as of January 1, 1924 (Finding 23, W97, 98). When said accountants set up said books they submitted their reports (W404-407; W408-417; W501), which accountants' reports were in evidence in said Harper suit 7374 (W404, 405). Said accountants were familiar with the Moffett Brothers books and October 12, 1931 (W123) prepared Commerce Trust Company Exhibit No. 8 (W 123-151) which was introduced in evidence (Finding 27, W101) in said Harper suit 7374, the same being a summary of the accounts of John Moffett, Thomas S. Moffett and Moffett Brothers Cattle, Land & Lumber Company

(Oklahoma partnership) with the said Moffett Brothers partnership, including analysis of aforesaid accounts (W133-149). Said Exhibit 8 (W123-151) gives the Court a fair idea of the accounts and the setting up of the new books as of January 1, 1924. Said accountants (respondents here) Kopp and Copman were witnesses at the trial of said Harper suit 7374 (Helen Weede Exhibits 18 [W612-620], 19 [W620-632]). Petitioner Louise McGrew Moffett produced the said books which were introduced in evidence at the trial of said Harper suit 7374 (W99). Depositions of respondent William H. Kopp (W591-612) and respondent Helen Weede (W572-591) were taken in said Harper suit 7374 prior to the trial. Petitioner Louise McGrew Moffett's counsel interrogated respondent Helen Weede concerning so-called "work sheets" in connection with setting up of the new books, in said deposition (W574-577) where she testified that accountant Kopp made his own investigation of all the items in setting up the new books and wrote up his own work sheets and compiled his own figures in setting up the books, independent from any help from respondent Helen Weede (W576) and that the only work sheets that were prepared by respondent Helen Weede, then Helen Moffett, were in analyzing the farm operating accounts for income tax purposes (W577). Petitioner Louise McGrew Moffett presented to the Supreme Court of the United States her contentions concerning so-called "work sheets" and books (W632-636).

Most earnestly the Court is urged to read entire Finding 23 (W97-99).

The 46 Specifications of Error filed by petitioner Louise McGrew Moffett in the Supreme Court of Kansas as set forth in her Abstract of Record, cause 30826, July 13, 1932, on appeal from said final decrees in said Harper suit 7374, give the Court a definite idea of the broad scope

of petitioner's contentions therein (Helen Weede Exhibit 49; W984). Petitioner then attacked said final Harper decrees which had been affirmed by the Kansas Supreme Court aforesaid, in the United States Courts (14 Fed. Supp. 602; 81 Fed. 2d 431; Certiorari denied, 298 U. S. 675). Then petitioner collaterally again attacked said Harper decrees in the Missouri courts (193 S. W. 2d 588, 592; 354 Mo. 1098; Appeal dismissed 329 U. S. 669; Rehearing denied 329 U. S. 827).

The Hymer ranch in Kansas was owned by the Moffett Brothers & Andrews partnership (John Moffett, Thomas Moffett and L. B. Andrews) until November 13, 1917, when it was sold to E. T. Anderson under a sales contract (Helen Weede Exhibit 22; W637). Later, June 17, 1920, L. B. Andrews and Thomas S. Moffett, in writing, assigned their interest in the unpaid balance of said Hymer ranch sales contract to John Moffett (W637, 638). On September 18, 1923, John Moffett deposited $98,925.00 in the Moffett Brothers bank account (W646) which he received as a payment upon said contract (W645-647) and received credit for said sum (Finding 43, W109). Petitioner Louise McGrew Moffett testified in said Harper suit 7374 that she does not deny that said Hymer ranch proceeds, $98,925.00, was John Moffett's money (W646). Numerous interest payments were also made to John Moffett arising from said Hymer ranch transactions (W646, 647; W110) and in each instance the money was deposited in the bank account of Moffett Brothers and John Moffett was given credit for same (W110). John Moffett accepted from E. T. Anderson in partial satisfaction of the balance due upon aforementioned Hymer ranch sales contract three notes and second mortgages, all dated July 16, 1923, payable to John Moffett, in the total amount of $43,550.00 (C519) (see 516-519). Following the death of John Moffett, August 23, 1927, Thomas S. Moffett (the husband of

petitioner) as administrator of Moffett Brothers in Kansas made application to the Probate Court of Chautauqua County, Kansas, for authority to pay out of the Moffett Brothers partnership funds to himself as executor of the estate of John Moffett in Missouri, the sum of $22,491.61 to protect the said second mortgages on the Hymer ranch, and procured an order therefor dated May 10, 1928 (Orlin A. Weede, Exhibit 11, W321-325), which order referred to the indebtedness of Moffett Brothers partnership estate to John Moffett estate, and also the necessity of the transfer of said sum of $22,491.61 so that said money could be used by the John Moffett estate to purchase the equity in the Hymer ranch in order to preserve said second mortgages (W324, 325). Thomas S. Moffett as executor of the John Moffett estate in Missouri made application for and procured an order in said estate in the Probate Court of Jackson County, Missouri, April 7, 1928, approving his acts in preserving the equity in said Hymer ranch lying in Morris and Chase Counties, Kansas, in order to protect the John Moffett estate second mortgages held on said lands (C677-679; C680). Said Thomas S. Moffett signed and acknowledged June 11, 1928, a declaration of trust that the John Moffett estate was the owner of three second mortgages upon said Hymer ranch and that since the death of said John Moffett said lands were purchased by Thomas S. Moffett, acting as executor of the John Moffett estate, and therefore he, Thomas S. Moffett, held the legal title to said Hymer ranch in trust for the estate of John Moffett, deceased, because "the money paid for such lands was money belonging to the estate of John Moffett, deceased" (W329). On June 2, 1928, petitioner Louise McGrew Moffett, wife of said Thomas S. Moffett, signed and acknowledged the following statement as a part of the above declaration of trust:

"The lands composing the Hymer ranch as mentioned in the foregoing declaration of trust and conveyed to Thomas S. Moffett as therein recited were purchased with the money of the estate of John Moffett, deceased, and said lands are owned by the estate of John Moffett, deceased" (W329, 330).

Thomas S. Moffett as executor asked the court for directions, whereupon the said Probate Court on February 7, 1929, entered its order ordering said Thomas S. Moffett to convey said Hymer ranch to said Commerce Trust Company, his successor (C517). Thomas S. Moffett and petitioner Louise McGrew Moffett signed and acknowledged on February 26, 1929, a special warranty deed to Commerce Trust Company, conveying said Hymer ranch located in Morris and Chase Counties, Kansas, to the respondent Commerce Trust Company. Photostatic copy of said special warranty deed is set out herein (W330-333). The first and second mortgages on said Hymer ranch are referred to therein (W331).

ALL OF THE FOREGOING MATTERS AND THINGS RELATING TO SAID HYMER RANCH WERE CONSIDERED IN THE SUIT 7374 IN THE DISTRICT COURT OF HARPER COUNTY, KANSAS, Finding 43 (W109, 110). Also see Helen Weede Exhibits 22 (W637), 25 (W645); Orlin A. Weede Exhibit 13 (W328).

Petitioner Louise McGrew Moffett in her own handwriting entered the items on the account of the estate of John Moffett with Moffett Brothers partnership estate, upon the Moffett Brothers books (W326) (introduced in evidence in said Harper suit 7374), subsequent to the death of John Moffett August 23, 1927, of the following amounts: $5,891.61, $1,500.00, $15,000.00 and $100.00, as shown upon the photostatic copy of said ledger page (W327), totaling the amount $22,491.61 for which amount

said Thomas S. Moffett procured order in the Probate Court of Chautauqua County, Kansas (W321-325). Petitioner repeatedly herein calls the account of John Moffett with Moffett Brothers "void" notwithstanding the many adjudications cited herein that said account is valid.

Petitioner sets out two photostatic copies of alleged property statements (417, 419) by which she tries to establish that John Moffett recognized that Moffett Brothers & Andrews owned the Hymer ranch contract in 1921 and 1922. These statements disclose that same include all of the Moffett Brothers partnership lands; Thomas S. Moffett's house; L. B. Andrews' house; Moffett Brothers Cattle, Land & Lumber Company partnership lands in Oklahoma; Andrews, Lewis and Moffett partnership land in Meade and Logan Counties, Kansas; also 4183 acres of land in Barber County, Kansas, which petitioner would claim belonged to Thomas S. Moffett individually. The purpose of the statements was apparently not to establish the ownership of the property listed, but to indicate to banks, or someone, the ability of the partnership of Moffett Brothers & Andrews and the partners individually and collectively, and otherwise, to pay.

The E. T. Anderson sales contract indicates E. T. Anderson owned the Hymer ranch in 1921 (W637, 638). As to the papers listed by appellant as "Index-Filing Cabinet" (156) made in 1921 by Helen Weede, all are old papers that belonged to Moffett Brothers & Andrews when the partnership owned the ranch before selling to E. T. Anderson November 13, 1917, under said sales contract. The papers belonging to John Moffett in acquiring all the interest in said sales contract and subsequent transactions as to same are not mentioned in said "Index-Filing Cabinet." The letter (141) written on the stationery of Beardsley & Beardsley for signature of Helen Weede, then Helen Moffett, is consistent with her position that

said second mortgages were the property of John Moffett. Said letter was considered in evidence in said Harper suit (W647, 648), and objection sustained that the letter was never acted upon (W648). Instead, payments on account were made to the John Moffett estate by Moffett Brothers, as shown by the photostatic copy of ledger page (W327) where the payments on account are shown in the handwriting of petitioner Louise McGrew Moffett between the dates August 31, 1927, and April 2, 1928 (W326, 327).

As to petitioner's allegations in paragraphs 27 to 32 Second Amended Complaint, as to alleged lost title paper, Motion To Dismiss of Respondent Orlin A. Weede (88-90) shows that at most petitioner is attempting to make an insinuation and that all of the petitioner's allegations assert that the incidents complained of occurred prior to the trial of said Comanche suit 3348 (W449) (W569). These exhibits show that said Orlin A. Weede was admittedly never in possession of said deeds to Comanche County lands but that Thomas S. Moffett was in possession of said deeds (W489, 490); that said deeds were in evidence in said Comanche suit (Finding 6, W289; W292; W451). Petitioner's abstract in the Kansas Supreme Court made no reference to any lost deeds or title papers (W304). Petitioner's affidavit says reason no objection was made in Comanche trial concerning any lost title paper was because before the trial Mr. Watson, her attorney, said they did not know the contents of the "missing title paper" and for said reason refused to introduce any evidence as to Mr. Weede's alleged acts concerning same in the Comanche suit (W163). See Journal Entry of Judgment (W279), Journal Entry of Partition (W296), and deed confirming partition of petitioner to respondent Helen Weede (then Helen Moffett) (W302). T. S. Moffett had based his claim to one-half of John Moffett's Co-

manche County, Kansas, land upon an oral contract (W550). The Court held there was no oral contract (W290). See pleadings filed in said Comanche suit 3348 (W542-566). See written agreement between John Moffett and T. S. Moffett (W564, 565). In the Comanche suit T. S. Moffett attempted to take one-half of John Moffett's land mentioned in said contract in addition to his own (W545; W547-553; W553-564).

Petitioner has called Orlin A. Weede's Exhibit 35 (W433) a "false affidavit" in its entirety, merely because of an error in stating petitioner's counsel, E. C. Wilcox, OKd the Journal Entry of Judgment (W434) signed by Judge Hay and filed March 5, 1932, in said Harper suit 7374, whereas, said E. C. Wilcox was present but did not OK said entry, and this is the only error in said Exhibit 35, which was corrected in Orlin A. Weede Exhibit 36 (W440, 443, 445), of which petitioner makes no mention. Obviously, the presence of or the lack of an OK cannot affect the validity of a judgment of the court (W205).

Said Orlin A. Weede Exhibit 36 sets forth the facts, showing that Mr. Watson, petitioner's counsel, had within his possession prior to March 5, 1932, date of hearing Commerce Trust Company Motion to change Conclusion of Law No. 11, two forms of Journal Entry so that one could be used if the court overruled said Motion and to use the other in the event the court sustained said Motion. The Court sustained said Motion and said E. C. Wilcox placed his OK upon the order sustaining same, filed March 5, 1932 (W443; C552-555). This change, March 5, 1932, in Conclusion of Law No. 11 was made within term time as original judgment was rendered January 13, 1932, and the Court takes judicial notice of Section 20-1024 R. S. Kans. 1923. This was the only change made in the

Harper decrees after judgment was rendered January 13, 1932, and consisted in substituting the domiciliary administrator for ancillary administrator in receiving moneys due Moffett Brothers (C553, 555); (14 Fed. Supp. 602).

The Moffett Brothers accounting situations in Harper suit No. 7374 are described in Supplemental Separate Amended Answer of Helen Moffett (now respondent Helen Weede), filed in said suit February 19, 1931, asking for an accounting (W1019-1037). Also see her Special Answer filed therein June 15, 1931 (W828). Petitioner Louise McGrew Moffett filed her pleadings in said Harper suit (W380-382 adopting W363-380; W380-393). See W215, 216.

ARGUMENT.

I.

Res Judicata.

This is the fifth time that petitioner has carried the Moffett litigation complained of herein to the Supreme Court of the United States, and in each instance Your Honorable Court either denied or dismissed her petitions, to-wit:

Comanche County, Kansas, case, *Moffett* v. *T. S. Moffett, Louise McGrew Moffett* (petitioner), *et al.*, 292 P. 942, 131 K. 546 (1930); Certiorari denied, 283 U. S. 826, 75 L. Ed. 1440, 51 S. Ct. 351 (No. 700).

Harper County, Kansas, Equity-Accounting-Partition suit: *Moffett* v. *Moffett*, 292 P. 947, 131 K. 582 (1930); *Clark, Louise McGrew Moffett* (petitioner) v. *Helen Moffett* (now respondent Helen Weede), *Commerce Trust Company* (now respondent), *et al.* (Jan., 1933); Certiorari denied, 290 U. S. 602, 290 U. S. 642 (No. 181).

Petitioner's attacks in Kansas and Tenth Circuit UNITED STATES COURTS on decrees of District Court of Harper County, Kansas (next before cited); *Louise McGrew Moffett* (petitioner) v. *R. O. Robbins, etc.*, 14 F. Supp. 602 (1935); *Louise McGrew Moffett* (petitioner) v. *R. O. Robbins, etc.*, 81 F. 2d 431 (Jan., 1936); Certiorari denied, 298 U. S. 675 (No. 918).

Petitioner's damage suit in Missouri state courts against same parties as now which petitioner says was same as instant suit (see petitioner's Record, p. 29): *Louise McGrew Moffett* (petitioner) v. *Commerce Trust Company, Helen Weede, et al.*, 193 S. W. 2d 588 (especially note l. c. 592), 354 Mo. 1089 (Feb., 1946); Appeal dismissed, 329 U. S. 669, 91 L. Ed. 30, 67 S. Ct. 82 (No. 318 October Term 1946); Rehearing

denied, 329 U. S. 827. For scope of this conspiracy damage suit prosecuted by petitioner through the Missouri state courts, see petitioner's Jurisdictional Statement (W862-905) on appeal to the United States Supreme Court, filed July 19, 1946, No. 318, October Term, 1946, wherein same assertions and contentions were made by petitioner as now, and by her same counsel, M. J. O'Donnell, who has been her counsel in all of the aforegoing litigation.

In instant suit, the United States District Court dismissed petitioner's amended complaint in December, 1946 (75 F. Supp. 303), but permitted petitioner to file her second amended complaint herein, and aforementioned Court dismissed with prejudice petitioner's second amended complaint December 1, 1949 (87 F. Supp. 438). The United States Court of Appeals, Eighth Circuit, affirmed (187 F. 2d 242). Now herein petitioner seeks a writ of certiorari. This is the fifth time petitioner has carried Moffett litigation to the Supreme Court of the United States and the fourth time in Your Honorable Court petitioner has attacked the final Harper County, Kansas, decrees above referred to. It would seem that there should be an end to this litigation and that the petition for writ of certiorari herein should be denied. The Missouri Supreme Court stated in petitioner's conspiracy damage suit aforementioned that petitioner has not only had her day in court but her "months and years" and then set out citations (193 S. W. 2d l. c. 592).

Note how studiously petitioner has tried to keep the aforegoing prior litigation citations from Your Honorable Court in her petition and brief in support thereof. Same appear on the face of petitioner's second amended complaint as already pointed out in the statement set forth at the beginning of this brief. Same are *res judicata.*

The Court of Appeals opinion herein (187 F. 2d l. c. 246) in this connection stated:

> "In regard to all the state court judgments now under attack, the inference is inescapable from the complaint that in each case the plaintiff (petitioner) or Thomas S. Moffett appeared, was represented by counsel, was accorded a complete trial, in all of the actions enjoyed the right of appeal, and in many of them exercised it without avail."

***Res judicata.* There must be an end to litigation. Final decrees, judgments and orders of courts of competent jurisdiction are conclusive not only as to all matters which were decided but as to all matters which might have been decided. Petitioners are not at liberty to split up their claim and prolong litigation. *Guettel* v. *United States,* 8 Cir., 95 Fed. (2d) 229, 230-232; Certiorari denied 305 U. S. 603, 83 L. Ed. 383, 59 S. Ct. 64. This law applies to adjudications complained of by petitioners.**

The United States Supreme Court has spoken plainly that there must be an end to litigation, in *Riley* v. *New York Trust Co.,* 315 U. S. 343, relating to full faith and credit and *res judicata* concerning estate and probate proceedings, and holds that "matters once decided between adverse parties in any State or territory are at rest." *Fauntelroy* v. *Lum,* 210 U. S. 230, 236, is a celebrated case relating to a Missouri Judgment, holding that full faith and credit be given decisions of sister states.

To same effect—*Union Nat. Bk.* v. *Lamb,* 337 U. S. 38, and *Heiser* v. *Woodruff,* 66 S. Ct. 853, 857.

United States v. *Munsingwear, Inc.,* 71 S. Ct. 104, 105, 106:

> "We start then with a case which falls squarely within the classic statement of the rule of *res judicata* in *Southern Pacific R. Co.* v. *United States,* 168 U. S. 1, 48-49, 18 S. Ct. 18, 27, 42 L. Ed. 355:

'The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue, and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and, even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.'

And see *Cromwell* v. *County of Sac,* 94 U. S. 351, 352, 24 L. Ed. 195; *Commissioner of Internal Revenue* v. *Sunnen,* 333 U. S. 591, 597-598, 68 S. Ct. 715, 719, 92 L. Ed. 898."

See *American Surety Co.* v. *Baldwin,* 287 U. S. 156, 53 S. Ct. 98, 77 L. Ed. 231, and *Stoll* v. *Gottlieb,* 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104.

Mendez & Co. v. *General Motors Corp.,* 161 Fed. (2d) 695, 698, follows the Eighth Circuit case, *Guettel* v. *United States, supra,* holding that all claims of a litigant, legal or equitable, must be presented and that a litigant is not at liberty to split up his demand because such practice would lead to endless litigation.

Martin v. *Broderick,* Tenth Circuit, 177 Fed. (2d) 886, 887, rules to the same effect, citing *Guettel* v. *United States, supra.* Said Guettel case has been cited repeatedly by courts generally in holding that there must be an end to litigation. *Buffalow* v. *Plainfield Hotel Corp.,* 177 Fed. (2d) 425, 427, to same effect.

Wilson v. *United States* (8 Cir.), 166 Fed. (2d) 527, holds that the doctrine of *res judicata* is one of the most fundamental doctrines of all courts and that there must be an end to litigation.

Moffett v. *Robbins,* 14 Fed. Supp. 602, in petitioner's suit attacking the Harper suit 7374 decrees, holds that it is well established that when a party has a defense which he could have interposed and was not prevented from doing so by accident, fraud or mistake, he cannot reserve that defense to some other time or forum and thus develop a multiplicity of suits and prolong litigation, citing an Eighth Circuit case, *Smith* v. *Apple,* 6 Fed. (2d) 558, and other cases. *Moffett* v. *Robbins, supra,* was sustained, 81 Fed. (2d) 431; certiorari denied, 298 U. S. 675.

White v. *Sinclair Prairie Oil Co.,* 139 Fed. (2d) 103, 107, ruled that a party is not at liberty to split up a demand and prosecute it piecemeal and leave the rest to be presented in a subsequent suit if the first fails, citing many cases.

The opinion below by the Court of Appeals for the Eighth Circuit specifically mentions how petitioner has been afforded a complete hearing in each instance in the state courts where final adjudications were rendered (187 F. 2d 242, 244, 246, 248) (Pro. 2, 6, 7, 11). Also the District Court below held:

> "The purport of plaintiff's complaint is to seek from the federal courts a policing of the state courts.
>
> • • • • • •
>
> All the averments of the complaint show that the challenged acts or decisions were done or rendered in the regular course of judicial procedure, after due process." (87 F. Supp. 441.) (778, 779.)

Respondents Helen Weede and Orlin A. Weede have also provided the Court with numerous court records and official citations disclosing the many final judgments, decrees and orders of courts of competent jurisdiction which

petitioner is attempting herein to again relitigate. These are indicated in INDEX to Supplemental Record of respondents Helen Weede and Orlin A. Weede, and are set out in said Supplemental Record. Respondents Helen Weede and Orlin A. Weede earnestly ask the Court to note said INDEX.

Motion to dismiss is proper as to defense of *res judicata*. In instant suit prior adjudications appear on face of Second Amended Complaint. Undisputed court records also show *res judicata*.

Bloomfield Ave. Corp. v. *Montclair Mfg. Co., Inc.*, 90 F. Supp. 1020, l. c. 1021:

> "The court said that the pleadings and judgments were properly treated as a plea of *res judicata* by the District Court. In a footnote the court stated that a defense of this kind may be raised either by motion to dismiss or in the answer. See: 2 Moore's Federal Practice, 2nd edition, par. 8.28 and par. 12.09. In this case both parties have had the opportunity to submit, and have submitted, affidavits from which it clearly appears that there is no genuine issue as to a material fact so far as the defense of *res judicata* is concerned."

II.

Petitioner has already resorted to equity in attacking the final decrees in Suit 7374, District Court of Harper County, Kansas, wherein she alleged conspiracy-fraud as to same parties and situations as here.

Louise McGrew Moffett (Petitioner), *etc.*, v. *Robbins, etc.*, 14 F. Supp. 602; 81 Fed. (2d) 431; Certiorari denied, 298 U. S. 675.

In petitioner's equity suit in the United States courts, attacking final decrees in suit 7374 of District Court of Harper County, Kansas, she litigated numerous identical allegations as here, as set forth in her TRANSCRIPT OF RECORD in TENTH CIRCUIT and UNITED STATES SUPREME COURT (Orlin A. Weede Exhibit 1, W36-261), to-wit: conspiracy (W53, 54, 64, 66, 80, 86); sales of Kansas lands (W64, 65); "void judgments" in Harper suit 7374 (W52, 53, 67); "false analysis of books" (W59); "work sheets" "prepared by Helen Moffett" (W59); "fraud on the Court" (W68); "conspirators" (W80); alleged "false claim" by John Moffett estate vs. Moffett Brothers (W81, 84); "Commerce Trust Company failing to file motion for new trial" (W71); "Kingman trip by B. C. Howard and Orlin A. Weede" and alleged interviews with Judge Hay (W84, 87); change in Conclusion of Law No. 11 (W88); depositions of B. C. Howard and Orlin A. Weede (W63; W87, 88); change in Journal Entry of Judgment to conform to order changing Conclusion of Law 11 (W88); charges against trial judge, Harper suit (W61; W65, 66; W213, 214); also fraud (W60-71), and other allegations as here throughout her Bill. The Tenth Circuit opinion appears W250-259.

III.

There was an adversary trial in Harper suit.

That there was an adversary trial in the said Harper suit 7374, clearly appears in opinion of petitioner's suit against R. O. Robbins, 81 Fed. (2d) 437 (C46), which paragraph concludes:

> "In these circumstances the mere allegation that there was no adversary trial is a conclusion which the record affirmatively disproves."

IV.

Petitioner has had her days in court.

Note contentions in petitioner's points relative Jurisdiction (W317, 318) and Specifications of Error (W318, 319) in the United States Supreme Court in her Petition for Writ of Certiorari No. 700, year 1930, in said Comanche County, Kansas, litigation, 292 Pac. 942, 131 K. 546 (W316, 319). Certiorari denied 283 U. S. 826.

Petitioner's Petition for Writ of Certiorari in the United States Supreme Court, No. 181, year 1932, in said Harper suit (W649) shows what petitioner submitted to that court, attacking the Harper final decrees, 18 Pac. (2d) 555, 136 K. 711. Certiorari denied, 290 U. S. 602, 290 U. S. 642.

The Petition for Writ of Certiorari by petitioner in the United States Supreme Court, No. 918, year 1935, in said Robbins case attacking 14 Fed. Supp. 602, 81 Fed. (2d) 431 (W672), shows petitioner's many contentions made there same as now. Certiorari denied, 298 U. S. 675. Note Brief of Respondent in opposition to petitioner's said Petition for Writ of Certiorari (W711-785) where law is set forth applicable to the identical situations petitioner

again presents here. See INDEX (W712-715) to said Brief, applicable here.

Petitioner's Statement as to Jurisdiction in the Supreme Court of the United States, No. 318, year 1946, appeal from decision of Missouri Supreme Court, 193 S. W. (2d) 588, 592, petitioner's conspiracy-damage suit, stated by her to be the same as here (29), wherein it was held petitioner has had her days and years in court (193 S. W. (2d) 592), sets forth how petitioner presented her alleged federal questions (W862-905). In that suit petitioner asked the United States Supreme Court for a full hearing on the merits (W905-921). Petitioner's Motion for Rehearing in said conspiracy-damage suit is set out herein (C448-504). Appeal dismissed, 329 U. S. 669. Rehearing denied, 329 U. S. 827.

V.

Conclusiveness of decree confirming sale. A decree final and not appealed from affirming a sale is effectual as against the parties to suit.

Mackenzie v. *A. Englehard, etc., Co.*, 266 U. S. 131.

Petitioner does not state she was prevented in any manner whatever from setting up any defenses.

Pewabic Mining Co. v. *Mason*, 145 U. S. 349, holds that it is the policy of the law not to set aside a sale of property for trifling causes; and further holds: "Litigants prolonging litigation • • • cannot complain if it takes place finally in a time of financial depression."

VI.

Fraud allegations cannot be used as an excuse to obtain further hearing upon matters which were or could have been brought before a court to make case or defense, or because parties neglected to litigate such matters in original case.

Winchell v. *Gaskill*, 190 S. W. (2d) 266, 354 Mo. 593.
See *Odom* v. *Langston*, 75 F. Supp. 651, re relitigation.
Schatte v. *International Alliance, etc.*, 182 F. (2d) 158.

VII.

Fraud-conspiracy allegations must be specific and cannot be plead by generalities and conclusions. Motion to dismiss does not admit generalities or conclusions as to fraud allegations.

Rule 9(b) Federal Rules of Civil Procedure.
Judge Reeves in instant suit, 87 Fed. Supp. 438, 441 (779).

Fogg v. *Blair*, 139 U. S. 118, 127, holds that allegations of generalities are not admitted on demurrer.

Pennie v. *Reis*, 132 U. S. 459.
United States v. *Aines*, 99 U. S. 34-45.
Louise McGrew Moffett (petitioner) v. *Robbins*, 14 Fed. Supp. 602, 604.
Browning v. *Blair*, 218 P. (2d) 233, 169 K. 139.

Lucas v. *Federal Reserve Bank*, 59 Fed. (2d) 619, holds that the use of adverbs "unlawfully," "wrongfully" and "falsely" do not add anything to the pleading.

Federal jurisdiction does not arise because averment is made as to the existence of a constitutional question.

A genuine and substantial federal question must be presented by the complaint. It is conceded that diversity of citizenship is not the basis of instant suit.

Polhemus v. *American Medical Assn.*, 145 Fed. (2d) 357, 359.
Campo v. *Niemeyer*, 182 F. (2d) 115, re Conspiracy-civil rights.
Brictson v. *Woodrough*, 8 Cir., 164 F. (2d) 107, re "Judges"; "Conspiracy."

VIII.

Respondent Helen Weede's interest in John Moffett estate has been repeatedly adjudicated in courts of competent jurisdiction, following her elections to take under the law. In deposition in Harper Suit 7374 prior (1931) to trial of that suit appellee Helen Weede testified there never had been an antenuptial agreement.

Because of lack of space in this brief the STATEMENT herein is hereby referred to and hereby adopted for all purposes of this argument, relating to the one-half interest of respondent Helen Weede, formerly Helen Moffett, widow of John Moffett, deceased, in the estate of said John Moffett, and that there was no antenuptial agreement (W490-494; W494-500), and as to her duly filing her elections in the States of Missouri (W534, 536), Kansas (W526; W532; W533; W534-542), and Oklahoma (W532), (W345, 346). Said one-half interest in said estate was adjudicated in the following suits to which petitioner Louise McGrew Moffett, her husband, or both, were parties: *Moffett* v. *Moffett*, 292 Pac. 942, 131 K. 546 (W292); *Moffett* v. *Moffett*, 292 Pac. 947, 131 K. 582 (C25); *Clark* v. *Moffett*, 18 Pac. (2d) 555, 136 K. 711 (W121); *Zombro* v. *Moffett*, 44 S. W. (2d) 149 (W335, 338, 340, 344); *Louise McGrew Moffett* v. *Helen Moffett*,

et al., No. 12178, Circuit Court, Clay County, Missouri (partition) (W353-355). The above final adjudications are now *res judicata* and cannot be collaterally attacked herein.

Vanek v. *Vanek,* 180 P. 240, 104 K. 624, repeatedly cited by petitioner, which was a case to set aside a will, is a strong case in favor of respondent Helen Weede as shown by Part 2 of the opinion, also Par. 2 of Syl. which reads:

> "2. Will of Bachelor-Construction of Statute. The provision of the statute that 'any married person having no children may devise one-half of his or her property to other persons than the husband or wife' (Gen. Stat. 1915, Sec. 11791), applies to the operation of wills made before marriage as well as after."

Said Vanek opinion cites with approval *Noecker* v. *Noecker,* 71 Pac. 815, 66 K. 347, and *Breen* v. *Davies,* 146 Pac. 1147, 94 K. 474, both of which cases clearly sustain the position of respondent Helen Weede herein. The widow of James Vanek in the Vanek case received one-half of his estate, as shown by the "receipt" executed by the widow (615) and the Order of Dischargee (616) in the Probate Court. The Brief of Appellants (W922-936) *as filed in said Vanek case* wholly refutes the contentions of appellant. Said Brief recites (W934):

> "There is no contention on the part of the appellants, that the will of James Vanek, is operative to more than one-half of his estate, the appellee's inchoate interest, in her deceased husband's estate is fixed by the statute, and no act of his, either before or after the marriage can divest her of that interest."

Petitioner attempts to make much of a purported letter from John Moffett to T. S. Moffett in 1921 (355). Appel-

lant's lawyer, A. E. Watson, in June, 1929, tore off and introduced the top of this letter in evidence (W570) in said Comanche suit to which both petitioner and respondent Helen Weede were parties, and now attempts to use the lower part of the letter before this Court. See testimony of T. S. Moffett (W569, 570). See statements of Mr. O'Donnell to District Court (W1000-1002). The letter says nothing about any antenuptial agreement (W569) (355). It is obvious petitioner or T. S. Moffett, her husband, had above letter at the time of John Moffett's death August 23, 1927, and also that they had said letter at said Comanche trial (W569, 570), June, 1929 (W281), which was before the trial of Harper suit 7374, 1931 (W180).

IX.

As to so-called "fictitious suits," the settled policy of federal courts is not to interfere with normal functioning of state courts in matters of which state courts have jurisdiction.

Casatari v. *General Finance Corp.*, 173 Fed. (2d) 798, l. c. 800, 801:

> "It is the settled policy of the Federal Courts not to interfere with the normal functioning of the state courts in matters in which they have jurisdiction. 28 U. S. C. A. No. 2283, Act of June 25, 1948; *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 62 S. Ct. 139, 86 L. Ed. 100, 37 A. L. R. 967; *United States ex rel. Kennedy* v. *Tyler*, 269 U. S. 13, 17, 46 S. Ct. 1."

X.

Protection offered by Fourteenth Amendment is only against acts of states and does not apply to acts of individuals.

Wilcox v. *Horan*, 178 Fed. (2d) 162, 164.
Bottone v. *Lindsley*, 170 Fed. (2d) 705; Cer. den. 336 U. S. 944.

See *Collins* v. *Hardyman*, 71 S. Ct. 937.

XI.

Questions as to whether administrator in Kansas or Missouri was a proper party to take judgment in Harper suit is a question of local law or practice. Decision by state Supreme Court is controlling.

Parker v. *McLain,* 237 U. S. 469 (W743, 744).
Riley v. *N. Y. Trust Co.,* 315 U. S. 343.

There is nothing in the concept of due process which demands that petitioner be afforded a second opportunity to litigate the existence of jurisdictional facts.

Chicago Life Ins. Co. v. *Cherry,* 244 U. S. 25.
Baldwin v. *Iowa State Traveling Men's Assn.,* 283 U. S. 522, 525.

Procedure similar to instant suit was used in *Smith* v. *Apple,* 6 Fed. (2d) 559, Eighth Circuit, where there was also an equity partition-accounting involved. *Coleman* v. *Apple,* 8 Cir., 298 Fed. 718, 720, 721, concerning partnership, involving property in Kansas and Oklahoma, and defining jurisdiction, and holding that a court of equity having authority to act upon the person may indirectly act upon real estate in another state, through the instrumentality of this authority over the person.

Petitioner presented this identical question to the Supreme Court of the United States, October term, 1933, No. 181, in said Harper suit, also, as herein, citing to Your Honorable Court *Helme* v. *Buckelew; McMaster* v. *Gould, and Thornburn* v. *Gates.* After the United States Supreme Court had denied petitioner's petition for Writ of Certiorari, she filed her MOTION OF PETITIONERS FOR PERMISSION TO FILE SUGGESTIONS SETTING FORTH REASONS SHOWING THAT ORDER DENYING CERTIORARI HEREIN ON OCTOBER 9,

1933, SHOULD BE REVOKED AND THE WRIT GRANTED, citing aforementioned cases again, as herein (W418-421). Certiorari denied, 290 U. S. 602, 290 U. S. 642.

Again petitioner in October term, 1935, No. 918, presented the same question and cited the same cases, *Helme* v. *Buckalew, etc.,* in her Petition for Writ of Certiorari in her suit against R. O. Robbins on appeal from 81 F. (2d) 431, and 14 F. Supp. 602, aforementioned (W673, W679, W696, W702, W703-704, W708); and perhaps thinking the court might not recognize the identical argument used in her Motion to Revoke the Denial of her Petition for Writ of Certiorari in the Harper suit, abovementioned, petitioner, through her same attorney, Martin J. O'Donnell, copied the argument again in her Petition for Writ of Certiorari at pages 36 to 47 in her said Robbins case. See comment concerning this (W722). Your Honorable Court again denied petitioner's petition for Writ of Certiorari, 298 U. S. 675.

The third time petitioner with same counsel again presented the same question (W900) to the United States Supreme Court was in her appeal, No. 318, October term, 1946, from the decision of the Missouri Supreme Court, in her conspiracy damage suit against same parties as here, 193 S. W. (2d) 588, 592. Said question was presented in petitioner's jurisdictional statement in said conspiracy damage suit (W900), said entire jurisdictional statement with the many questions as herein being set out herein (W862 to 905) of which the United States Supreme Court takes judicial notice as it is a part of the Court's Records. Petitioner's said Appeal was dismissed: 329 U. S. 669; Rehearing denied, 329 U. S. 827.

Now for the fourth time petitioner presents the above question again, on her petition for Writ of Certiorari, attacking the decision of the Court of Appeals for the

Eighth Circuit, 187 F. (2d) 242, which affirmed the United States District Court, 87 F. Supp. 438. Prior to that the District Court had also dismissed petitioner's Amended Complaint, 75 F. Supp. 303.

XII.

Decisions of lower courts herein are correct. No conflict.

On question as to how the District Court arrived at its decision, just cited, in dismissing petitioner's Second Amended Complaint herein, it is submitted that sufficient references to aforementioned prior litigation appear on the face of said Second Amended Complaint so that the Court of Appeals had no difficulty, and the United States Supreme Court now has no difficulty, in recognizing that petitioner has repeatedly had her days in court after due process, and that the pending state litigation complained of provides no federal question. Also, that the decisions of the lower courts are correct. The numerous unfounded and baseless attacks by generalities and conclusions against the many courts and judges lack anything specific that will blacken the name or reputations of those faithful public servants for performing their duty in presiding over the long list of trials and court proceedings which petitioner and her same attorney have prosecuted. Surely the Constitution and Civil Rights Act do not serve to permit relitigation time and again because a litigant is disappointed or disgruntled, after having been fully heard by courts of competent jurisdiction. The Court of Appeals for the Eighth Circuit made its position clear on this, and a mere jerking from its connection of the incidental statement of the Court of Appeals "* * * *assuming* that the state court proceedings were not within jurisdiction of the courts which decided them * * * they were not void but, at most, erroneous" does not destroy what the court

said and held. The opinion of the Court of Appeals is unmistakable and sound (Pro. 1-13). Also, 187 F. (2d) 242. Following the above quoted part objected to by petitioner, the Court of Appeals said: "Nothing in the Civil Rights Act gives a Federal Court jurisdiction to review them."

Petitioner has not shown any suit or proceeding attacked by her herein where the court or courts did not have jurisdiction over the parties and subject matter in each instance. Regularity is presumed. It affirmatively appears as hereinbefore set forth that the courts have had such jurisdiction and that the many courts have accorded petitioner her full days, months and years in court. The Missouri Supreme Court in petitioner's fraud-conspiracy suit against same parties as here so stated (193 S. W. (2d) l. c. 592; appeal dismissed, 329 U. S. 669; rehearing denied, 329 U. S. 827). Immediately preceding the above part of the opinion of the Court of Appeals criticized by petitioner appears the following (187 F. (2d) l. c. 248; Pro. 11):

> "Plaintiff's allegations that the decisions of the various state courts in litigation in which she was involved were void or arbitrarily or willfully made merely expresses an opinion not uncommon among defeated litigants, and, as appears from the face of the complaint, not entertained by the State Supreme Courts which reviewed the judgments. The charge that the state court judgments were intentionally and purposefully against plaintiff, aside from the fact that the language used would apply equally as well to the decision of any court, right or wrong, adds nothing to the force or effect of the complaint. *Snowden* v. *Hughes,* 321 U. S. 1."

XIII.

In Howard fee case Missouri Supreme Court passed on but one point: What, if any, additional fee should be allowed respondent B. C. Howard.

Petitioner emphasizes the Howard fee case. Respondents Helen Weede, Orlin A. Weede, Wm. H. Kopp and R. E. Copman were not parties to that suit. Said suit originated in the Probate Court of Jackson County, Missouri, and solely concerned a claim of respondent B. C. Howard for attorney fees for services rendered by him to Commerce Trust Company as administrator of the Moffett Brothers partnership estate. Therefore, probate procedure controlled. The Probate Court allowed him $9,000 ($7,700 and $1,300) (652-653), and petitioner Louise McGrew Moffett appealed to the Circuit Court of Jackson County, Missouri, which allowed him $7,500.00 fees, and on rehearing allowed him $11,500. From that judgment petitioner Louise McGrew Moffett appealed to the Missouri Supreme Court, where $1,300.00 was allowed. Fees for his services in the equity accounting partition suit in the District Court of Harper County, Kansas, No. 7374, were disallowed on the grounds that Mr. Howard represented Commerce Trust Company as executor of the John Moffett estate and also as administrator of the Moffett Brothers partnership estate in the Harper accounting. Petitioner's counsel, A. E. Watson, and her present counsel, M. J. O'Donnell, represented petitioner in said Harper County, Kansas, equity suit No. 7374, and also represented Grace Torrance Clark as administratrix of the Thomas S. Moffett estate, and also as administratrix of the Moffett Brothers partnership estate in Kansas. Said attorneys were paid $3,900.00 fees by Mrs. Clark out of the Moffett Brothers funds for so representing her, 81 F. (2d) l. c. 437 (C46). Also, see (W111, W112).

Although petitioner Louise McGrew Moffett in the Howard fee case collaterally attacked many final decrees in the Harper suit, none were minimized, modified or changed, and the Missouri Supreme Court in the Howard fee case passed upon only one point, to-wit: What, if any, additional Moffett Brothers fee should be paid to respondent B. C. Howard. The Missouri Supreme Court so stated twice in said Howard fee case (42, 43). Later, in petitioner's damage suit alleging conspiracy against the same parties as here (29), *the Missouri Supreme Court again stated that but one point was passed upon in said Howard fee case,* that is, what additional Moffett Brothers fees Mr. Howard was entitled to (*Moffett* v. *Commerce Trust Co., et al.,* 193 S. W. (2d) 588, l. c. 592, 354 Mo. 1098).

The Kansas Harper suit, referred to in the Howard fee case, was started by Mr. Watson for T. S. Moffett, husband of petitioner, in 1929. It was an equity accounting partition suit and not a suit at law as one individual against another.

The Harper suit was started by said attorney, A. E. Watson, August 15, 1929, for T. S. Moffett in the District Court of Harper County, Kansas, suit No. 7374, who obtained service upon all parties interested in the four Moffett estates included in the litigation, and asked for partition and that the interests of the parties be determined. John Moffett's death August 23, 1927, dissolved the Moffett Brothers and Oklahoma partnerships. He was survived by his widow, Helen Moffett, who is now respondent Helen Weede. *Everyone entered personal appearance.* Plaintiff T. S. Moffett through said attorney A. E. Watson attempted to partition the Moffett Brothers lands before there was an accounting, notwithstanding said prayer that the interest of the parties be determined, and opposed an accounting, and appealed to the

Kansas Supreme Court (131 K. 582, 292 P. 947). Respondent Commerce Trust Company intervened prior to this appeal in both of its capacities *at the same time* in the Harper equity accounting suit as administrator of the Moffett Brothers partnership estate and as executor of the estate of John Moffett, deceased, and also asked that there be an accounting before partition. Respondent B. C. Howard represented the Commerce Trust Company. After hearings, the trial court held that an accounting was proper and approved the interventions by respondent Commerce Trust Company. Plaintiff T. S. Moffett through his attorneys M. J. O'Donnell and A. E. Watson appealed to the Kansas Supreme Court and also included the question of said interventions. The Kansas Supreme Court held that an accounting was proper and approved the intervention of the Commerce Trust Company in its two capacities. (*Moffett* v. *Moffett*, 292 P. 947, 131 K. 582.) ALL THIS TOOK PLACE BEFORE THE TRIAL ON THE MERITS OF THE HARPER EQUITY ACCOUNTING SUIT. Plaintiff T. S. Moffett died December 22, 1930, and the Harper suit was duly revived in the name of the widow of T. S. Moffett, Louise McGrew Moffett (petitioner herein) and Grace Torrance Clark, administratrix of the estate of T. S. Moffett, deceased, in Kansas. Mrs. Clark was also administratrix in Kansas for the Moffett Brothers partnership estate, having given additional bond in said estate of T. S. Moffett. T. S. Moffett was the last surviving partner of Moffett Brothers in Kansas and therefore in Kansas the administration of that estate fell into the estate of T. S. Moffett (*Louise McGrew Moffett* (petitioner) v. *Robbins*, 14 F. Supp. 602). Mrs. Clark filed pleadings, briefs and petition for certiorari and otherwise represented Moffett Brothers in said Harper equity suit, *reviving said Harper suit in the Kansas Supreme Court following the death of Joseph W. Moffett*, and also was

a party to said suit in the capacity of administratrix of the T. S. Moffett estate in Kansas (*Moffett* v. *Robbins, supra*). Said attorneys M. J. O'Donnell and A. E. Watson at all times in said Harper equity accounting suit represented said Louise McGrew Moffett (petitioner) individually and said Grace Torrance Clark in her said dual representative capacities.

Stopped on a comma in quoting Kansas Supreme Court.

The Howard fee case (345 Mo. 741), in quoting the Kansas Supreme Court decision (18 P. (2d) 555, 136 K. 711) in the Harper suit stopped on a comma immediately after the words "Commerce Trust Company Exhibit No. 8." It is very important that the part of the Harper opinion left out be considered in connection with the first part quoted by the Howard fee case as it relates to the same subject, and shows that substantial evidence supported the accounting decree in favor of the John Moffett estate, to-wit:

> "These books were in court at the trial, and the entries in them, the testimony concerning some of those entries, and a summary of them prepared by accountants, known in this record as 'Commerce Trust Company Exhibit No. 8' (the following was omitted from the Howard Fee Case opinion) (*Comma*)," constituted the evidence on which this finding was based. This evidence shows this indebtedness exactly as found by the Court, hence there is no lack of evidence to sustain the finding.
>
> Appellants complain because the court received in evidence the summary of the books made by the accountants, 'Commerce Trust Company Exhibit No. 8,' and contend that it was incompetent and hearsay, and they contend that without it the evidence was insufficient. Naturally the original books were voluminous. They had been brought to the court in large

boxes and trunks. They had been in possession of the plaintiffs (petitioner Louise McGrew Moffett and Grace Torrance Clark), who had helped keep the books in recent years and were familiar with them. It was appropriate for a summary to be made by some one from them, collecting and properly setting down the entries or items bearing upon the controverted issues to be determined by the court. The trial court admitted this summary in evidence as informative only and not conclusive, and permitted the parties to refer to the original books as much as they desired and gave them ample time to do so. All other evidence relating to this indebtedness, the books and entries therein which either party offered, was received by the court."

In Howard fee case petitioner's counsel claimed they procured judgment against Oklahoma partnership in Harper suit, and asked fees therefor. Now petitioner and one of same counsel assert said judgment is "void."

Petitioner herein is asserting that the said decrees of the District Court of Harper County, Kansas, are "void," but when B. C. Howard was asking allowance of attorney fees from Moffett Brothers in said Howard fee case, attorney A. E. Watson (petitioner's attorney) testified in the Circuit Court of Jackson County, Missouri, at Kansas City in response to questions by Martin J. O'Donnell, petitioner's present counsel, as follows:

"Q. Mr. Watson, while you were down there in this Harper case you may state whether or not you and your humble servant and Mr. Wilcox didn't actively endeavor to establish the claimed indebtedness against Moffett Brothers Cattle, Land & Lumber Company. A. We did." (W396.)

• • • • • • •

"Q. Now, as a matter of fact, Mr. Watson, you may tell His Honor if you didn't by your efforts

assemble all those people in the Kansas suit in the District Court of Harper County. A. Yes, I instituted the suit and got service on all of them." (W396; W397.)

"Q. Now then, you may tell His Honor as a man who has been practicing law in Kansas since 1890, whether or not in your judgment you and Mr. Wilcox and perhaps myself should be paid by Moffett Brothers partnership estate for obtaining that judgment against the Oklahoma partnership.

* * * * * * *

A. I think we should be paid a reasonable sum for our services in that regard." (W397.)

On cross-examination Mr. Watson testified:

"The Court (interrupting): Answer the question if you prepared any account to that effect. A. We didn't prepare any account. But we had the books there that showed the account, and we introduced them in evidence." (W398.)

"Q. In the accounting the Harper suit; but you didn't present to the court any account and ask the court to allow it against the Moffett Brothers Cattle, Land & Lumber Company partnership estate in favor of Moffett Brothers? A. We certainly did. We produced the books of account.

Q. Did you prepare any account?

The Court: Pleading? * * * Setting up an indebtedness to that effect.

A. No." (W398; W399.)

In response to questions by Mr. O'Donnell, said Grace Torrance Clark (plaintiff in Harper suit and sister to petitioner Louise McGrew Moffett) testified in said fee case:

"Q. And when it became necessary to make proof with reference to the claim against the Oklahoma

partnership you may state whether or not you assisted Mrs. Moffett and myself and Mr. Wilcox and we did what we could towards establishing that claim against the Oklahoma partnership of Moffett Brothers. A. Yes.

Q. And what part, if any, did Mr. Howard take in presenting that claim down there so far as you saw? A. Chiefly only what he had had the accountants write in Commerce Trust Company's Exhibit 8.

Q. The original account books that were down there were brought by you or Mrs. Moffett? A. We took them.

Q. Did your counsel offer those in evidence? A. Yes.

Q. Or such parts as were necessary? A. They did.

Q. And you may state whether or not I wasn't also along trying to help prosecute that claim against the Oklahoma concern. A. Yes." (W399-400.)

On cross-examination Mrs. Clark testified:

"Q. Mrs. Clark, you referred to the judgment rendered in favor of Moffett Brothers against the Moffett Brothers Cattle, Land & Lumber Company partnership estate for over $100,000.00. Wasn't that judgment—And you say you helped to establish that judgment—You have just now so stated—Wasn't it rendered in the exact amount of the principal sum as set out in Exhibit 8 as submitted by the accountants Kopp & Copman? A. There was never any controversy over the amount of that claim that was due.

Q. But answer my question as to whether it was the same amount as reported to the court by the accountants Kopp & Copman. A. The same amount as in Commerce Trust Company's Exhibit 8.

Q. And the claim of Moffett Brothers partnership estate against the T. S. Moffett estate was also decreed and judgment rendered in the Harper suit No. 7374, in the identical amount as set out in Exhibit 8 as prepared by the accountants Kopp & Cop-

man and as reported to the court in suit 7374. Is that correct? A. The principal was the amount shown in the statement. The interest was what Mr. Howard requested the accountants to compute and put on there.

Q. Well, all right. Wasn't the judgment, though, in conformity with the report of the accountants Kopp & Copman? 'Yes' or 'No.' You know. A. No, I don't think it was, wholly. • • •

Q. Could you tell the court that you represented Moffett Brothers in any way to try to collect the judgment against the T. S. Moffett estate in case 7374 in the Harper County District Court? A. There was never any contest about the principal or the actual amout due." (W400-401.)

Notwithstanding the testimony just quoted, a few years after the Howard fee case, petitioner Louise McGrew Moffett with her same lawyers, Messrs. O'Donnell and Watson, filed the damage suit for $2,500,000.00 in the Missouri courts alleging that all Harper decrees were "void." This resulted in the decision against petitioner of the Missouri Supreme Court, 193 S. W. (2d) 588 (Mo. ....., 1946). The United States Supreme Court dismissed the appeal, 329 U. S. 669; rehearing denied, 329 U. S. 827.

Thereafter in the United States District Court petitioner Louise McGrew Moffett filed instant damage suit No. 4581 for $2,500,000.00, and again asserted that all the Harper decrees were "void."

XIV.

When a court of equity takes jurisdiction of a case it will do complete justice and settle all rights of the parties affected.

The Harper County, Kansas, suit No. 7374 was an equity accounting partition suit where all interested parties entered personal appearance and the court had jurisdiction of the subject matter. *Moffett* v. *Moffett,* 292 P. 947, 131 K. 582 (1930); *Clark, Louise McGrew Moffett* (petitioner) v. *Helen Moffett* (now respondent Helen Weede) *et al.,* 18 P. (2d) 555, 136 K. 711 (Jan., 1933). There was a complete equitable determination of the rights of all parties as heretofore pointed out. Likewise, the powers of an equity court in the State of Missouri permit a complete adjudication. *Detienne* v. *Peters et al.,* 188 S. W. (2d) 954, l. c. 956.

XV.

Final judgment in state court imports verity and it will not be presumed that the judgment was unsupported by evidence.

Owens v. *Battenfield,* 8 Cir., 33 Fed. (2d) 753.
Parker Bros. v. *Fagan,* 68 Fed. (2d) 616 (W756).
Harrington v. *Denny, et al.,* 3 Fed. Supp. 584.
Dionne v. *Hudspeth,* 199 Pac. (2d) 176, 166 K. 72.

XVI.

United States District Court has no appellate power over decisions of state courts. Also, has no jurisdiction to set aside final state decisions.

Louise McGrew Moffett (petitioner), *etc.,* v. *Robbins, etc.,* 10 Cir., 81 Fed. (2d) 431 (W749).
Louise McGrew Moffett (petitioner), *etc.,* v. *Robbins, etc.,* 14 Fed. Supp. 602.
Smith v. *Apple,* 8 Cir., 6 Fed. (2d) 559 (W749).
Coleman v. *Apple,* 8 Cir., 298 Fed. 718, 720, 721.
Riley v. *New York Trust Co.,* 315 U. S. 343, 62 S. Ct. 608, 86 L. Ed. 885.

XVII.

Whenever a decision of a state court becomes relevant in any aspect of a suit in a United States court, the latter must take judicial notice of the state decisions, just as if they were fully pleaded in the record.

Sewall v. *Mutual Drug Co.*, 7 F. R. D. 154, 155.
State of Ohio ex rel. Seney v. *Swift & Co.*, 6 Cir., 270 Fed. 141, 142; Cer. den., 257 U. S. 633, 42 S. Ct. 47, 66 L. Ed. 407, appeal dismissed, 260 U. S. 146, 43 S. Ct. 22, 67 L. Ed. 176.

Respondents Helen Weede and Orlin A. Weede hereby refer to the list of final judgments, decrees and orders in states of Missouri, Kansas and Oklahoma since the death of John Moffett, August 23, 1927, listed and cited in the Statement herein in litigation to which petitioner was a party and of which she complains herein, as fully as if set out in this argument, as well as those set out in the motions to dismiss as filed herein by respondents Helen Weede and Orlin A. Weede (94-99; 83-94), as all of said adjudications are now *res judicata* and cannot be collaterally attacked herein. Respondent Helen Weede's Exhibits Nos. 1 to 50, inclusive (W490-999), and respondent Orlin A. Weede's Exhibits 1 to 40 (W36-490) filed herein are hereby referred to as fully as if set out in this argument, and the Court's attention is especially invited to the INDEX to the Supplemental Record of respondents Helen Weede and Orlin A. Weede making direct references to said Exhibits. Said STATEMENT is also made a part of this argument for all purposes. Limited space makes this necessary. The District Court did not exclude the material filed herein by the parties (W1016). No equitable relief is sought herein (W1016). It is a damage suit (W1013).

PETITIONER DESIGNATED ENTIRE RECORD (W1; W1012), and RESPONDENTS FILED SUPPLEMENTAL RECORDS TO SHOW COURT RECORDS. THE COURTS BELOW HELD THAT ON THE FACE OF PETITIONER'S SECOND AMENDED COMPLAINT NO CAUSE OF ACTION IS STATED, that is, NO CLAIM IS STATED UPON WHICH RELIEF CAN BE GRANTED. MOTIONS TO DISMISS WERE SUSTAINED (82, 83). RESPONDENTS HELEN WEEDE AND ORLIN A. WEEDE MOTIONS APPEAR: (83-94; 94-99) (W6, W7).

A motion to dismiss for "failure to state a claim upon which relief can be granted" is the modern equivalent of a demurrer. *United Transport Serv.* v. *National Mediation Bd.*, 179 F. 2d 446, 452.

Public policy dictates that there be an end to litigation. *Baldwin* v. *Iowa State Traveling Men's Assn.*, 283 U. S. 522, 525, 51 S. Ct. 517, 75 L. Ed. 1244. To same effect: *Box* v. *Rundell*, 179 F. 2d 626, 628, citing above Baldwin case.

Conclusion.

Respondents Helen Weede and Orlin A. Weede submit that the many final decisions, judgments, decrees, adjudications and orders which appellant is attempting to collaterally attack herein and again relitigate herein, are all *res judicata* as to all matters adjudicated and which could have been adjudicated. That petitioner may not split litigation and litigate piecemeal. That the attacks upon pending state cases and against the state statutes herein present no federal question. That petitioner cannot in *a damage suit at law* make such collateral attacks. It is submitted that this prolonged litigation should come to an end. John Moffett died August 23, 1927. Thomas S. Moffett died

December 22, 1930. Petitioner has relitigated through the years, and would seem reasonable that such matters be concluded, and that the said petition for writ of certiorari should be denied.

Respectfully submitted,

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